

Commonwealth of Kentucky

Office of the Attorney General

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Protecting Your Right To Know:

The Kentucky Open Records and Open Meetings Acts

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Protecting Your Right To Know provides basic information about Kentucky's Open Records and Open Meetings Laws. The Attorney General provides this booklet to assist the citizens of Kentucky in obtaining the information that the law makes available to them.

An annotated outline containing references to prior Opinions of the Attorney General is available upon request. This outline provides information regarding the application of the Open Records and Open Meetings Laws to particular situations.

The Office of the Attorney General welcomes suggestions for improvements to this work, as well as ideas for future publications. Comments may be sent to Attorney General's Office, The Capitol, P. O. Box 2000, Frankfort, Kentucky 40602.

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The Open Records Act

In 1976, the General Assembly enacted the Open Records Act, KRS 61.870 to KRS 61.884, which establishes a right of access to public records. The General Assembly recognized that the free and open examination of public records is in the public interest. All public records, whether they are stored in a computer or on paper, must be open for inspection unless the records are exempted by one or more of the twelve exemptions found in the Act. You may inspect any nonexempt public record regardless of your identity.

What are public records?

The Open Records Act applies to public records maintained by state and local government agencies. The agencies covered by the Act include:

- State and local government officers, departments, and legislative bodies;
- County and city governing bodies, school district boards, special district boards, and municipal corporations;
- State or local government agencies created by statute or other legislative acts;
- Agencies that receive at least 25% of their funds from state or local authority;
- Agencies created and controlled by public agencies; and
- Interagency bodies of two or more public agencies.

Subject to twelve exceptions, records that are prepared, owned, used, possessed, or retained by a public agency are public records, and must be made available upon request.

What is the procedure for inspecting a public record?

To inspect a public record, you must make a written request to the official custodian of the records of the agency. The custodian is the agency employee who is responsible for maintaining the agency records. You should describe the records you want to inspect, sign the request, and print your name on it. You may hand-deliver, mail, or fax your request to the agency.

If you request copies of public records, the agency's copying charges must be limited to the actual cost of reproduction, including materials and mechanical reproduction, but not including the cost of personnel required to copy the record.

The public agency must respond to your request, in writing, and within three days, not including Saturdays, Sundays, and legal holidays. If the agency denies all or any part of your request, it must tell you which Open Records Act exemption it is relying on. The agency must also explain how the exemption applies to the record.

If the record that you want to inspect is in use or temporarily unavailable, the agency should notify you and designate a place, time, and date for inspection no more than three days from the date it received your request. If the delay is greater than three days, the agency must give you a detailed explanation of the cause.

You may inspect public records during the regular office hours of a public agency, or by receiving copies of the records through the mail. If you live or work outside the county in which the records are located, and you precisely describe the records, the public agency must mail copies to you. The agency may require advance payment of the copying fee and postage. In providing you with copies, the agency is not required to convert records from paper to electronic format, but is only required to give you what they have.

What records are exempt from public inspection?

The Open Records Act permits a public agency to withhold certain records from you unless you obtain a court order directing their release. These include:

- Records containing information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Records that are confidentially disclosed to an agency or required by the agency to be disclosed to it which are generally recognized as confidential or proprietary and which if disclosed would permit an unfair commercial advantage to competitors, including records which are compiled and maintained in conjunction with an application for or the administration of a loan or grant; the application for or the regulation of assessments, incentives, inducements, or tax credits; or the regulation of a commercial enterprise;
- Records that relate to the prospective location of a business or industry which has not previously disclosed that it is interested in locating, relocating, or expanding in Kentucky;
- Records developed by an agency in conjunction with the regulation or supervision of financial institutions which reveal the agency's internal examining or audit criteria;
- Real estate appraisals, engineering or feasibility estimates, and evaluations made by or for a public agency in the course of acquiring property, until all of the property has been acquired;
- Test questions, scoring keys, and other examination data used to administer a

licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

- Records of law enforcement agencies or agencies involved in administrative adjudication if disclosure of the records would harm the agency by premature release. Such records may be inspected after enforcement action is completed or a decision is made to take no action, unless they were compiled and maintained by a county or commonwealth's attorney or unless another exception applies;
- Preliminary documents, including drafts, notes, correspondence with private individuals, recommendations, and memoranda in which opinions are expressed or policies formulated; and
- Public records that are prohibited from disclosure by state or federal law.

What you can do if your request is denied?

If your request is denied, you may file an appeal with the Attorney General for review of the agency's actions. Your appeal must consist of a letter describing the circumstances of the denial, a copy of your written request, and a copy of the agency's written denial, if available. Unless you are an inmate confined in a jail or correctional facility, you may bypass the Attorney General's Office and file your appeal in circuit court. If you choose to go directly to circuit court, you will incur the costs of bringing a lawsuit, including filing fees and your attorney's fee.

The Attorney General will review your appeal and issue a decision. The decision will state whether the agency violated the Open Records Act by denying your request. You will receive a copy of the decision along with the agency. You or the public agency may appeal

the Attorney General's decision to the circuit court of the county where the agency has its principal place of business or where the record is maintained. The Attorney General should be notified of any circuit court action, but may not be named as a party in the action.

If an appeal is not filed within thirty days, the Attorney General's decision has the force and effect of law, and can be enforced in circuit court. However, the Attorney General does not have authority to force an agency to release records or otherwise enforce the decision after it is issued.

If you prevail against an agency in circuit court, you may be awarded costs, including reasonable attorney fees, if the court finds that the records were willfully withheld. The court may also award you up to \$25 for each day that you were denied the right to inspect the records.

The Open Meetings Act

In 1974, the General Assembly enacted the Open Meetings Act, KRS 61.805 to KRS 61.850, which establishes a right of access to public meetings. The General Assembly recognized that the formation of public policy is public business, and should not be conducted in secret. The Act requires that all meetings of a quorum of the members of a public agency where public business is discussed or action is taken must be public meetings. Public meetings must be open to the public at all times, unless the subject of the meeting falls within one or more of the twelve exceptions found in the statute. You may attend any public meeting, and you cannot be required to identify yourself in order to attend.

What is a public meeting?

The Open Meetings Act applies to public meetings held by state and local government agencies. The agencies covered by the Act include:

- State and local government boards, commissions, and authorities;
- State and local legislative boards, commissions, and committees;
- County and city governing bodies, councils, school district boards, special district boards, and municipal corporations;
- State and local government agencies, including policymaking boards of educational institutions, that are created by state or local statute or other legislative act;
- Bodies created by state or local statute or legislative act in the legislative or executive branch of government;

- Agencies which are established, created, and controlled by a public agency;
- Interagency bodies of two or more public agencies.

Subject to twelve exemptions, all gatherings of a quorum of the members of a public agency at which public business is discussed or action taken are public meetings and must be open to the public, regardless of where they are held and whether they are regular or special or informational or casual gatherings held in anticipation of a regular or special meeting. An agency's meetings may be conducted by video teleconference, which is defined as a meeting occurring in two or more locations where individuals can see and hear each other by means of video and audio equipment.

What are the rules governing open meetings?

The Open Meetings Act requires that all public meetings be held at times and places that are convenient to the public, and that the agency make a schedule of its regular meetings available to the public. The agency must record minutes of actions taken at its meetings, and these minutes must be open for public inspection no later than its next meeting. If possible, the meeting room must allow effective public observation of the meeting, and the only conditions for attendance are those required for the maintenance of order. The Open Meetings Act does not govern the conduct of meetings and citizen participation. Each agency must adopt its own rules of procedure.

A "special meeting" may be called by the presiding officer or a majority of the members of the public agency. The agency must give written notice consisting of the date, time, and place of the meeting and the agenda. Discussions and actions at the meeting must be limited to the items listed on the agenda. Written notice must be delivered to the members of the agency, and every media organization that has requested advance notice, at least twenty-four hours before the meeting. Notice must also

be posted in a conspicuous place in the building where the meeting will take place. If an emergency prevents the agency from following these procedures, it must make a reasonable effort to notify the members of the agency, the media, and the public.

What subjects may be discussed in a closed session?

The Open Meetings Act permits a public agency to discuss certain subjects in a closed or executive meeting if notice is given in the regular meeting of the general nature of the business to be discussed, and the agency cites the specific exemption authorizing the closed session. A closed session may be held only after a motion is made and carried in open session, and no final action may be taken in closed session. A video teleconference cannot be used for a closed session. The exemptions to the Open Meetings Act include:

- Deliberations of the Kentucky Parole Board;
- Deliberations on the future acquisition or sale of real property by a public agency when publicity would be likely to affect the value of the property;
- Discussions of proposed or pending litigation involving a public agency;
- Grand or petit jury sessions;
- Collective bargaining negotiations between public employers and their employees;
- Discussions or hearings that might lead to the appointment, dismissal, or disciplining of an individual employee, member, or student. However, general personnel matters may not be discussed in private;
- State and local cabinet meetings and executive

cabinet meetings;

- Committees of the General Assembly other than standing committees;
- Deliberations of judicial or quasi-judicial bodies involving individual adjudications or appointments. This does not include meetings of planning commissions, zoning commissions, or boards of adjustment; and
- Meetings which federal or state law or the Constitution require to be conducted privately.

What you can do if you believe an agency has violated the Open Meetings Act

If you believe that a public agency has violated the Open Meetings Act, you must submit a written complaint to the presiding officer of the agency. You must state the circumstances of the violation, and what the agency should do to correct it.

Within three business days of receipt of your complaint, the public agency must decide whether to correct the violation and notify you in writing of its decision. If the agency rejects your proposed remedy, it must issue a written response which cites the statute authorizing its actions, and briefly explaining how the statute applies.

You may file an appeal with the Attorney General for review of the agency's action within sixty days of receipt of the agency's response. You must include a copy of your written complaint and a copy of the agency's response, if available. The Attorney General will review your appeal and issue a decision stating whether the agency violated the Open Meetings Act. Both you and the agency will receive a copy of the decision. You or the public agency may appeal the Attorney General's decision to the circuit court of the county where the public agency has its principal place of business or where the violation occurred. If an appeal is not filed within

thirty days, the Attorney General's decision has the force and effect of law, and can be enforced in circuit court.

If you prevail against an agency in circuit court, you may be awarded costs, including attorney fees, if the court finds that the violation was willful. The court may also award you up to \$100 for each violation.

Sample Forms

Sample open records request

John Smith, City Clerk
Municipal Building
Anytown, Kentucky 40999

Dear Mr. Smith:

I respectfully request to inspect the following records:

1. All contracts that the city has with Home Wrecker Service;
2. Any correspondence between the mayor and the Home Wrecker Service since January 1, 1990.

If these documents are temporarily unavailable, please inform me of the earliest date when I may inspect them.

I also request a copy of the contract between the city and Home Wrecker Service dated October 14, 1992. I understand that I will have to pay the actual cost of making this copy.

Thank you for your attention to this request.

Sincerely,

Jane Q. Citizen

Sample open records appeal

Attorney General
Capitol Building
Frankfort, Kentucky 40601

Re: Open Records Appeal

Dear Attorney General:

I am appealing the refusal of the city clerk of Anytown, Kentucky, to allow me to inspect records in his possession. A copy of my written request is attached. A copy of the clerk's response denying my request is also attached.

The clerk claims that the records are not open records because they are preliminary recommendations. I do not agree because the records I request to inspect are binding contracts between the city and a wrecker service.

Sincerely,

Jane Q. Citizen

Sample open meetings complaint

William Jones, Mayor
Municipal Building
Anytown, Kentucky 40999

Dear Mr. Jones:

Because you are the presiding officer at city council meetings I am submitting to you a complaint concerning an action that took place at the city council meeting held on June 30, 1994. At that meeting the council voted to go into a closed or executive session to discuss general personnel matters.

The council cannot legally go into a closed or executive session to discuss general personnel matters. See KRS 61.810(1)(f).

I am requesting that the council discuss at a future meeting, in an open and public session, those matters that were discussed at the improperly called closed session on June 30, 1994. Any action taken as a result of the improperly called session should be declared null and void.

Sincerely

John Q. Citizen

Sample open meetings appeal

Attorney General
Capitol Building
Frankfort, Kentucky 40601

Re: Open Meetings Appeal

Dear Attorney General:

I am appealing the denial of my complaint by the mayor of Anytown, Kentucky, concerning the closing of a council meeting held on June 30, 1994, at which the council discussed general personnel matters. I am enclosing a copy of my complaint to the mayor and a copy of the mayor's denial of my complaint.

The mayor maintains that the session of the council meeting in question may be closed to the public because

personnel matters were discussed. In my opinion the closing of such a session to the public is a violation of KRS 61.810(1)(f).

Sincerely,

John Q. Citizen

Other Sources of Useful Information

Here is a list of publications that provide useful information for citizens who are interested in learning about and participating in public affairs.

Beyond Voting: A Citizen's Guide To Participating In Local Government, Kentucky Local Governance Project, 433 Chestnut Street, Berea, Kentucky 40403.

A Citizens' Guide To The Kentucky Constitution, Research Report No. 137, Legislative Research Commission, Capitol Building, Frankfort, Kentucky 40601.

County Government In Kentucky, Informational Bulletin No. 115, Legislative Research Commission, Capitol Building, Frankfort, Kentucky 40601.

Duties Of Elected County Officials, Informational Bulletin No. 114, Legislative Research Commission, Capitol Building, Frankfort, Kentucky 40601.

Handbook For Newly Elected Officials, Kentucky League of Cities and Department of Local Government, 1992.

Kentucky Municipal Statutory Law, Informational Bulletin No. 145, Legislative Research Commission, Capitol Building, Frankfort, Kentucky 40601.

Outline: Open Records And Open Meetings, Office of the Attorney General, Capitol Building, P. O. Box 2000, Frankfort, Kentucky 40602.

